

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF ADMINISTRATION

In the Matter of the Appeal of the  
Determination of the Responsible  
Authority for Carver County Community  
Social Services that Certain Data  
Concerning Sandy Fiecke are Accurate  
and/or Complete

**ORDER ON MOTION FOR SUMMARY  
DISPOSITION AND MOTION FOR  
PROTECTIVE ORDER**

The above-entitled matter came before Administrative Law Judge Kathleen D. Sheehy on the motion for summary disposition of Carver County Community Social Services and the motion of Sandy Fiecke for a protective order. The motion record closed on January 23, 2007.

Thomas W. Haines, Assistant Carver County Attorney, Government Center, Justice Center, 604 East Fourth Street, Chaska, MN 55318-2102, appeared for Carver County Community Social Services (County). Tori M. Appelhof, Esq., Sieloff and Associates, PA, Yankee Square Office III, 3460 Washington Drive, Suite 214, Eagan, MN 55122, appeared for Sandy Fiecke (Petitioner).

Based on the record in this matter, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**ORDER**

IT IS HEREBY ORDERED THAT:

1. The County's motion for summary disposition is DENIED;
2. The Petitioner's motion for a Protective Order is GRANTED; and
3. The deadline for the parties to exchange their exhibits and witness lists is extended from February 27, 2007, to March 2, 2007.

Dated: February 22, 2007

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

## MEMORANDUM

The Petitioner was employed by Family Focus as a social worker whose responsibilities included licensing foster parents who provided care for developmentally delayed children, many with abuse in their past. During 2005, the adopted son of a foster family, with whom the Petitioner worked, sexually abused other children placed in the home. In the course of investigating whether the foster parents neglected the abused children by failing to adequately supervise their son, County employees wrote statements critical of the Petitioner. The Petitioner requested retraction of the following statements:

We are also concerned that home conditions did not appear to be addressed by your Family Focus social worker, Sandy Fiecke.<sup>1</sup>

My main concern regarding this situation has to do with Sandy Fiecke. She seems to have a close relationship with this family, both professionally and socially. There appear to be major boundary issues relating to Sandy's history with [the family] and with a certain therapist. It is hard for me to understand how the home could be in such conditions with regular on-site visits by a licensing worker. What bothers me the most is that neither Sandy, or [the family], informed Family Focus about the extent of [a minor child's] risk to other children. The [family] had received letters of disqualification in the past due to [three minor children]. Sandy wrote letters of commendation and appears to have minimized the incidents.<sup>2</sup>

The County agreed to retract the name of one minor child in the second statement, because only two of the children in question had disqualifications, but otherwise declined to retract the above statements as the Petitioner requested. The Petitioner appealed to the Commissioner of Administration, contending the above data are not accurate or complete and should be removed or otherwise corrected.<sup>3</sup> The Commissioner issued a Notice and Order for Hearing on September 26, 2006, after efforts to resolve the dispute informally were unsuccessful.

The County has moved for summary disposition, contending that the statements are accurate in that they reflect the writers' "concerns," and since there is no dispute that the writers in fact had these concerns, the appeal should be dismissed. In addition, the County argues that the statements the Petitioner seeks to retract are contained in the investigation file concerning the family, which is private data on other individuals, and that the Petitioner may not challenge the factual basis for the concerns expressed in these statements

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<sup>1</sup> Letter dated September 22, 2005 (Request for Reconsideration of Neglect Determinations of July 29, 2005).

<sup>2</sup> E-mail dated October 10, 2005 from a County social worker to a supervisor.

<sup>3</sup> Minn. Stat. § 13.04, subd. 4 (2006).

because the County may not disclose it pursuant to a protective order entered in the maltreatment appeal and Chapter 13 of Minnesota Statutes.

The Petitioner opposes the motion, arguing that statements made in the course of the maltreatment investigation are data subject to correction under Minn. Stat. § 13.04; that the statements are not accurate because they lack a factual basis; and that, if it is necessary for the County to use private data to explain the basis for the statements, it could be done through a protective order issued in this proceeding pursuant to Minn. Stat. § 13.03, subd. 6 (2006).

## **Legal Standard**

Summary disposition is the administrative equivalent of summary judgment.<sup>4</sup> Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. A genuine issue is one that is not a sham or frivolous. A material fact is a fact whose resolution will affect the result or outcome of the case.<sup>5</sup>

The County, as the moving party, has the initial burden of showing the absence of a genuine issue concerning any material fact. To successfully resist this motion for summary disposition, the nonmoving party, Petitioner, must show that there are specific facts in dispute that have a bearing on the outcome of the case.<sup>6</sup> The existence of a genuine issue of material fact must be established by the nonmoving party by substantial evidence; general averments are not enough to meet the nonmoving party's burden.<sup>7</sup> The evidence presented to defeat a summary judgment motion, however, need not be in a form that would be admissible at trial.<sup>8</sup> The nonmoving party also has the benefit of the most favorable view of the evidence. All doubts and inferences must be resolved against the moving party.<sup>9</sup>

## **Analysis**

The Minnesota Data Practices Act provides that an individual subject of data may contest the accuracy or completeness of public or private data.<sup>10</sup> “Accurate” means that the data in question is reasonably complete and free from error; “complete” means that the data in question reasonably reflects the history

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<sup>4</sup> *Sauter v. Sauter*, 70 N. W. 2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N. W. 2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03.

<sup>5</sup> *Illinois Farmers Insurance Co. v. Tapemark Co.*, 273 N. W. 2d 630, 634 (Minn. 1978); *Highland Chateau v. Minnesota Department of Public Welfare*, 356 N. W. 2d 804, 808 (Minn. App. 1984).

<sup>6</sup> *Hunt v. IBM Mid America Employees*, 384 N. W. 2d 853, 855 (Minn. 1986).

<sup>7</sup> *Id.*; *Murphy v. Country House, Inc.*, 307 Minn. 344, 351-52, 240 N. W. 2d 507, 512 (1976); *Carlisle v. City of Minneapolis*, 437 N. W. 2d 712, 715 (Minn. App. 1988).

<sup>8</sup> *Carlisle*, 437 N.W.2d at 715 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)).

<sup>9</sup> See *Celotex*, 477 U.S. at 325; *Thiele v. Stich*, 425 N. W. 2d 580, 583 (Minn. 1988); *Greaton v. Enich*, 185 N. W. 2d 876, 878 (Minn. 1971); *Dollander v. Rochester State Hospital*, 362 N. W. 2d 386, 389 (Minn. App. 1985).

<sup>10</sup> Minn. Stat. § 13.04, subd. 4(a) (2006).

of an individual's transactions with the particular entity. Omissions in an individual's history that place the individual in a false light shall not be permitted.<sup>11</sup> Data on individuals that is successfully challenged must be completed, corrected, or destroyed.<sup>12</sup>

The County argues first that because the disputed statements are "concerns," and because there is no dispute that the writers of the statements had these concerns, the statements are accurate and complete and the County is entitled to judgment as a matter of law. The Petitioner argues that the factual assumptions underlying these "concerns" are inaccurate or incomplete. The Petitioner disputes the accuracy of the assumptions that she failed to address conditions in the home; that she had an unprofessional relationship with the family that created boundary issues; and that she knew of the adopted son's risk to other children in the home but failed to inform her employer about it and otherwise minimized the risk that he might sexually abuse children placed there.<sup>13</sup>

Statements that are not free from error or that, through omission, place a person in a false light, are subject to correction under the Data Practices Act.<sup>14</sup> The Commissioner of Administration has authority to require correction of both factual errors and conclusions that are based on erroneous facts.<sup>15</sup> Framing a statement as a concern or opinion does not immunize the speaker from the obligation to defend the accuracy or completeness of the facts on which the concern or opinion is based. Because those facts are disputed, the County's motion for summary disposition on this ground is denied.

The County next argues that the underlying facts cannot be challenged because they are contained in the investigation file concerning the family in question, which is private data on those individuals.<sup>16</sup> The County contends it is therefore "not possible" to consider the truth or falsity of the facts beneath the expressed concerns. The Petitioner argues that this data is relevant and discoverable subject to a protective order.

The Minnesota Data Practices Act provides that if a government entity opposes discovery of data on the grounds that the data are not public, the party seeking access may move to compel discovery before the appropriate presiding

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<sup>11</sup> Minn. R. 1205.1500, subp. 2.

<sup>12</sup> Minn. Stat. § 13.04, subd. 4(b).

<sup>13</sup> See Petitioner's Notice of Appeal at 2-3.

<sup>14</sup> Minn. R. 1205.1500, subp. 2.

<sup>15</sup> *In the Matter of the Appeal of the Determination of the Responsible Authority for South Washington County School District 833 that Certain Data Concerning Hilda P. Dunbar are Accurate and/or Complete*, 620 N.W.2d 45, 47 (Minn. App. 2000); *Hennepin County Human Services Department v. Hale*, 470 N.W.2d 159, 164 (Minn. App. 1991).

<sup>16</sup> The Petitioner has also requested discovery of evidence in the County's possession that supports the disputed statements. Despite its argument that the Minnesota Data Practices Act precludes disclosure of this material, the County disclosed the statements to the Petitioner's employer in October 2005. See Attachment 2 to Notice of Appeal.

judicial officer, arbitrator, or administrative law judge. The presiding officer shall first decide whether the data are discoverable or releasable pursuant to the rules of evidence and procedure appropriate to the action. If the data are discoverable, the presiding officer shall decide whether the benefit to the party seeking access to the data outweighs any harm to the confidentiality interests of the entity maintaining the data, or of any person who has provided the data or is the subject of the data, or to the privacy interest of an individual identified in the data. The presiding officer may fashion and issue any protective orders necessary to assure proper handling of the data by the parties.<sup>17</sup>

The data sought here is the County's evidence supporting the disputed statements about the Petitioner. This data is undeniably relevant and discoverable. In addition, the benefit to the Petitioner in obtaining the data outweighs the interest of County in keeping it private; and because the Petitioner is already aware of and appears to have been at least somewhat involved in the maltreatment investigation and subsequent hearing, her interest in obtaining the data at this point also outweighs the privacy interests of other individuals identified in the data. The family's privacy interests can be well protected pursuant to the terms of a protective order. Accordingly, whatever evidence the County has to support the statements at issue should be provided to the Petitioner subject to the enclosed Protective Order.

In addition, the County contends that the underlying factual data may not be disclosed pursuant to the terms of a protective order issued when the family appealed the maltreatment by neglect determination to a Department of Human Services Judge. In that proceeding, the judge issued a protective order pursuant to the fair hearing statute, Minn. Stat. § 256.045, subd. 4(b). The protective order permitted the disclosure of information about persons other than the foster parents, and it precluded use of that data in other proceedings.<sup>18</sup> The County's argument that the protective order issued in the fair hearing process precludes the use of data in this proceeding, however, is legally without basis. The fair hearing statute expressly provides that restrictions imposed by protective orders issued in that process do not prohibit access to the data under Minn. Stat. § 13.03, subd. 6.<sup>19</sup> Because the Administrative Law Judge has determined that access to the data is appropriate under § 13.03, subd. 6, the County's motion for summary disposition on the ground that the underlying facts are not discoverable is denied; the Petitioner's motion for a protective order is granted.

K.D.S.

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<sup>17</sup> Minn. Stat. § 13.03, subd. 6.

<sup>18</sup> Ex. 6 to Petitioner's Memorandum of Law (Protective Order dated October 27, 2005).

<sup>19</sup> Minn. Stat. § 256.045, subd. 4(b).